IN THE UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:	HORENTRUP, Jobst, et al.
For:	METHOD FOR REPRESENTING ANIMATED MENU BUTTONS
Serial No.	10/550,262
Filed	September 22, 2005
Art Unit	2174
Examiner	BELOUSOV, Andrey
Attorney Docket No.	PD030034
Confirmation No.	1365

APPEAL BRIEF

ON APPEAL FROM GROUP ART UNIT 2174

Mail Stop Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Appeal Brief is submitted both in support of the Notice of Appeal, which was filed April 8, 2009, and in response to the Final Office Action dated January 15, 2009.

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I. REAL PARTY IN INTEREST

The real party in interest is Thomson Licensing, the assignee of record, whose assignment is recorded in the USPTO on four (4) pages beginning at Reel 017861, Frame 0309.

II. RELATED APPEALS AND INTERFERENCES

Appellants are not aware of any pending appeals, judicial proceedings, or interferences which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

a)   Claims 1, 3, 5, 6, 8, 10-12, 14, 15, and 17-25 are pending in this application, stand rejected in an Office Action dated January 15, 2009, and are the subject of this appeal.

b)   Claims 1 is the only independent claim.

c)   Claims 2, 4, 7, 9, 13, and 16 have been cancelled to date.

IV. STATUS OF AMENDMENTS

The claims listed in Section VIII, Claims Appendix, of this Appeal Brief correspond to the claims as submitted in Appellants' response filed October 24, 2008, where claim amendments were submitted and entered. All amendments filed in this application have been entered and there are none pending.

V. SUMMARY OF CLAIMED SUBJECT MATTER

It should be explicitly noted that it is not the Appellants' intention that the currently claimed or described embodiments be limited solely to operation within the illustrative embodiments identified below. Furthermore, descriptions of illustrative embodiments are provided below in association with portions of the claims, which are related to the identified illustrative embodiments, entirely for compliance with, and satisfaction of, the requirements for filing this appeal. There is no intention to read any further interpreted limitations into the claims as presented.

The claimed invention, as recited in claim 1, is directed to a method for representing menu buttons in a menu for controlling the presentation of video data stored on a storage medium, the menu buttons having one out of three states, the states being normal, selected or activated (*see page 4, lines 24-30)*, wherein the video data are presented on a display according to a given video frame rate (*see page 7, lines 7-20)*, the method comprising the steps of retrieving from said storage medium data describing the menu buttons, the data comprising, for each button, image data (*see page 4, lines 1-5 and page 5, line 24 through page 10, line 26)*; retrieving from said storage medium a value representing a relative rate for animating a sequence of pictures, wherein the rate is relative with respect to the video frame rate (*see page 3, lines 21-26 and page 7, line 22 through page 8, line 2, also see Table 2 on page 8)*; and representing the menu buttons on said display, wherein a menu button is represented by different images corresponding to different image data depending on its state being normal, selected or activated (*see page 5, lines 1-8)*, and wherein the image data representing a particular menu button state includes a sequence of pictures, the sequence of pictures being animated according to said relative rate (*see page 5, lines 10-12)*.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection for this application for which review is sought in this appeal are presented below as follows:

1. Whether claims 1, 3, 5, 8, 10-12, 17-21, 23, and 25 are properly rejected by the USPTO under 35 U.S.C. §102(b) as being anticipated by *"Flash 5 in an Instant"*, by Michael Toot et al., pages 166-181 (Wiley 2001) (hereinafter referenced as *"Toot"*); and

2. Whether claims 6, 22, and 24 are properly rejected by the USPTO under 35 U.S.C. §103(a) as being unpatentable over Toot in view of *"Flash 5! Creative Web Animation"*, by Derek Franklin, Chap. 5 (three (3) pages) and Chap. 10, Level 1, Section 2 (eight (8) pages) (hereinafter referenced as *"Franklin"*).

VII. ARGUMENT

Appellant respectfully traverses the objections and the rejections in accordance with the detailed arguments set forth below.

1. CLAIMS 1, 3, 5, 8, 10-12, 17-21, 23, AND 25 ARE IMPROPERLY REJECTED BY THE USPTO UNDER 35 U.S.C. §102(B) AS BEING ANTICIPATED BY TOOT.

Claim 1

Claim 1 is an independent claim that serves as a base claim for claims 3, 5, 8, 10-12, 17-21, 23, and 25. Claim 1 calls, in part, for, "retrieving from said storage medium a value representing a relative rate for animating a sequence of pictures, wherein the rate is relative with respect to the video frame rate … and wherein the image data representing a particular menu button state includes a sequence of pictures, the sequence of pictures being animated according to said relative rate."

The cited subject matter from the claim defines an animation frame rate for a sequence of pictures. The animation frame rate is defined to be relative to the video frame rate, such as 0.5 x video_frame_rate. *See specification at page 8, Table 2.* One benefit of using a relative rate is that animation can be authored and used independently from the actual or absolute video frame rate. For all button animations of a menu, the menu author can specify an animation frame rate, thereby defining how long each phase of an animation is displayed. *See specification at page 5, line 10.*

An animation is created to be visible at a frame rate relative to the video frame rate. The animation_frame_rate_code gives the animation frame rate relative to the video frame rate. *See specification at page 7, line 23 through page 8, line 2.* The animation_frame_rate_code field taught by Appellants specifies the frame rate of animations in the case of animated buttons being used. It applies to a range of regions specified by start_region_id_xxx and end_region_id_xxx, with the "xxx" referring the state of a button. If a start_region_id_xxx and its corresponding end_region_id_xxx differ, the two IDs define a range of regions that shall be presented on the display using this animation frame rate. *See specification at page 7, line 7.*

The animation frame rate is the rate at which single frames of the animation are intended to be played, or the length of time that each phase of an animation is displayed. *See specification at page 5, lines 10-12.* The animation frame rate is set during the menu authoring process. It is to be understood that the animation frame rate is distinguished from the actual video frame rate, for example, 24 fps for movies, 30 fps for domestic television programming, or 25 fps for European television programming. The animation rate is also different from the final display frame rate, which depends on the actual display device.

Toot appears to show that a button symbol can be created with animation effects. But Toot fails to teach, show, or suggest that an animation rate for a picture sequence is defined relative to a video frame rate, or that a value representing such an animation rate for the picture sequence is stored on, or retrievable from, the storage medium. The present Office Action identifies several sections of Toot from page 172 to page 174 as allegedly providing support for the rejection of this limitation. However, the only frame rate visible on the pages shown is the <u>absolute rate</u> of 12 fps shown slightly above image of the leaf in the toolbar of the upper right frame. Toot does not show any other rate for frames in the text or figures. Moreover, Toot does not show any capability for making that 12 fps rate relative to any other rate.

The USPTO appears to agree with Appellants' stated position because the present Office Action at page 3 states that the teaching of a relative rate is "inherent" in Toot because "there would be an implicit relationship (relative) between 'the rate' and the 'video frame rate'". Appellants' claim clearly calls for data to be retrieved in the form of a relative rate for animating the sequence of pictures so that the retrieved rate is relative to the video frame rate of the display (*see claim preamble and second "retrieving" limitation*). This is not taught, shown, suggested, or even implied by the disclosure of Toot.

In light of the remarks above, it is believed that the elements of claim 1 are not taught, shown, or suggested by Toot. It is therefore submitted that claim 1 is not anticipated by Toot and that claim 1 would not have been obvious to a person of ordinary skill in the art upon a reading of Toot, either separately or in combination with any known prior art. Thus, it is submitted that claim 1 is also allowable under both 35 U.S.C. §102 and 35 U.S.C. §103. It is respectfully requested that the Board reverse this rejection of claim 1.

Dependent Claims 3, 5, 8, 10-12, 17-21, 23, and 25

Claims 3, 5, 8, 10-12, 17-21, 23, and 25 depend ultimately upon claim 1. Each dependent claim includes all the features of claim 1 including the particular features discussed immediately above. Appellants essentially repeat the above argument from claim 1 for each of dependent claims 3, 5, 8, 10-12, 17-21, 23, and 25. Thus, it is submitted that claims 3, 5, 8, 10-12, 17-21, 23, and 25 are allowable at least by virtue of their dependency from claim 1 and because each claim recites further distinguishing features thereover. It is respectfully requested the Board reverse the rejection of dependent claims 3, 5, 8, 10-12, 17-21, 23, and 25.

2. CLAIMS 6, 22, AND 24 ARE IMPROPERLY REJECTED BY THE USPTO UNDER 35 U.S.C. §103(A) AS BEING UNPATENTABLE OVER TOOT IN VIEW OF FRANKLIN.

Claim 6, 22, and 24

Each of claims 6, 22, and 24 depend directly or indirectly from independent claim 1 and include all the limitations of claim 1. Particularly, these claims include at least the limitations of claim 1 pertaining to the relative rate being a frame rate relative to the video frame rate for display.

Toot has been discussed above with respect to claim 1. In those remarks, which are incorporated in full herein by reference, it was argued that Toot fails to teach, show, or suggest the existence of a relative rate being a frame rate relative to the video frame rate for display. Because of the dependency of claims 6, 22, and 24 ultimately from claim 1, Appellants essentially repeat the above argument from claim 1 over Toot for each of dependent claims 6, 22, and 24.

At page 3 of 8, Franklin allegedly shows a "current frame rate setting" of 12.0 fps, which is an absolute value and, therefore, an absolute rate. That is, it is not a rate which is set with reference to any other rate or value. Instead, it is set simply as an absolute number. According to Franklin, the conventionally specified "current frame rate setting" of 12 fps may differ from the actual playback speed due to processor-intensive animation executed on a slow processor running. *See Franklin at page 4 of 8 with respect to "Frame rate".* As a result, Franklin suggests that the actual frame rate is unpredictable, and may result in the problems, which are mentioned in Franklin's section on "Choosing the Proper Frame Rate".

Franklin appears to discuss a technique for setting the frame rate to minimize disturbances that result from processor overload. But Franklin never even mentions or remotely suggests setting the animation rate to a rate relative to the video frame rate. Franklin instead sets or "hard codes" the animation frame rate value to be an absolute rate or value, <u>not a relative rate or value</u>. So Franklin fails to cure the apparent defects in the teachings of Toot. Thus, both Franklin and Toot fail to teach, show, or suggest each and every element defined in Applicants' claims 6, 22, and 24, all ultimately dependent from claim 1.

In light of the remarks above, it is submitted that claims 6, 22, and 24 would not have been obvious to a person of ordinary skill in the art upon a reading of Toot and Franklin, either separately or in combination with any known prior art. Thus, it is submitted that claims 6, 22, and 24 are also allowable under 35 U.S.C. §103. It is respectfully requested that the Board reverse this rejection of claims 6, 22, and 24.

Conclusion

In light of these remarks, it is submitted that claims 1, 3, 5, 8, 10-12, 17-21, 23, and 25 are not anticipated by Toot and therefore are allowable. It is also submitted that claims 6, 22, and 24 would not have been obvious to a person of ordinary skill in the art upon a reading of Toot in view of Franklin. Therefore, it is believed that claims 1, 3, 5, 6, 8, 10-12, and 17-25 are allowable under both 35 U.S.C. §102 and 35 U.S.C. §103. It is respectfully requested that the Board of Patent Appeals and Interferences reverse the rejection of claims 1, 3, 5, 6, 8, 10-12, and 17-25.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Previously Presented) A method for representing menu buttons in a menu for controlling the presentation of video data stored on a storage medium, the menu buttons having one out of three states, the states being normal, selected or activated, wherein the video data are presented on a display according to a given video frame rate, the method comprising the steps of

- retrieving from said storage medium data describing the menu buttons, the data comprising, for each button, image data;

- retrieving from said storage medium a value representing a relative rate for animating a sequence of pictures, wherein the rate is relative with respect to the video frame rate; and

- representing the menu buttons on said display, wherein a menu button is represented by different images corresponding to different image data depending on its state being normal, selected or activated, and wherein the image data representing a particular menu button state includes a sequence of pictures, the sequence of pictures being animated according to said relative rate.

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2. (Cancelled)

3. (Previously Presented) The method as claimed in claim 1, wherein, for a particular state of a menu button, said sequence of pictures representing said button is repeated as long as the button remains in particular state.

4. (Cancelled)

5. (Previously Presented) The method as claimed in claim 1, wherein a sound or sound sequence is associated to a particular state of a particular menu button, the sound or sound sequence being played back upon entry of the button into the associated state.

6. (Previously Presented) The method as claimed in claim 5, wherein the sound associated with a state of a menu button is a speech sequence.

7. (Cancelled)

8. (Previously Presented) The method as claimed in claim 1, wherein said storage medium comprises a data segment defining a page composition, the data segment containing said data representing the menu buttons and said value representing a rate for animating a sequence of pictures.

9. (Cancelled)

10. (Previously Presented) An apparatus for displaying a menu on a screen, the menu being controlled by menu data read from a storage medium and the menu comprising menu buttons, the apparatus being adapted for representing the menu buttons as claimed in the method of claim 1.

11. (Previously Presented) The apparatus as claimed in claim 10, wherein for a particular state the sequence of pictures representing a button is repeated as long as the button remains in its state.

12. (Previously Presented) The apparatus as claimed in claim 10, wherein a sound or sound sequence are associated to a particular state of a particular menu button, the sound or sound sequence being played back upon entry of the button into the associated state.

13. (Cancelled)

14. (Previously Presented) The apparatus as claimed in claim 10, wherein the apparatus retrieves from said storage medium a data segment defining a menu page composition, the data segment containing said data representing the menu buttons and said value representing a rate for animating a sequence of pictures.

15. (Previously Presented) The apparatus as claimed in claim 10, wherein the data segment comprises sound data for a sound associated to a particular state of a particular menu button.

16. (Cancelled)

17. (Previously Presented) The method as claimed in claim 1, wherein said data describing the menu buttons further comprise two region identifiers per button state, and each button image is addressable through at least one of said region identifiers.

18. (Previously Presented) The method as claimed in claim 17, wherein said two region identifiers per button state specify a range of regions, and each of the two region identifiers addresses a button image of said sequence of pictures.

19. (Previously Presented) The apparatus as claimed in claim 10, wherein said data describing the menu buttons further comprise two region identifiers per button state, and each button image is addressable through at least one of said region identifiers.

20. (Previously Presented) The apparatus as claimed in claim 10, wherein said two region identifiers per button state specify a range of regions, and each of the two region identifiers addresses a button image of said sequence of pictures.

21. (Previously Presented) The method as claimed in claim 1, further comprising the step of setting, according to said retrieved value, the rate for animating sequences of pictures.

22. (Previously Presented) The method as claimed in claim 1, wherein said relative rate at which the sequence of pictures is animated is an integer fraction of the video frame rate and is lower than the video frame rate.

23. (Previously Presented) The apparatus as claimed in claim 10, wherein the apparatus further comprises means for setting, according to said retrieved value, the rate for animating sequences of pictures.

24. (Previously Presented) The apparatus as claimed in claim 10, wherein said relative rate at which the sequence of pictures is animated is an integer fraction of the video frame rate and is lower than the video frame rate.

25. (Previously Presented) A storage medium being adapted for being readable by an apparatus as claimed in claim 10.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ **1.130**, **1.131**, or **1.132** of this title. No other evidence has been entered by the Examiner and/or relied upon by Appellant in this appeal, at this time.

X. RELATED PROCEEDINGS APPENDIX

Appellants are not aware of any appeals or interferences related to the present application.